

Head Start Vaccine Mandate

Special Conversation with CAPLAW



CAPLAW
Community Action Program Legal Services, Inc.

December 1, 2021

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Agenda

- General Overview
- Requirements
 - Mask Mandate
 - Vaccine Mandate
- Cost Allowability
- Accommodations
- Recordkeeping
- Other Federal + State Laws
- Enforcement + Full Enrollment

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General Overview

- **November 30, 2021:** All individuals 2+ must **mask** at all Head Start facilities, even if fully vaccinated
- **January 31, 2022:** All staff*, certain volunteers, and certain contractors must be **fully vaccinated**
- Must accommodate medical/religious exemptions
- Determine vaccination status and keep records
- Covered individuals must promptly notify program and be excluded from facility if contract COVID

**Staff = adults who are paid (regardless of funding source) with responsibilities related to HS children and families*

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Mask Mandate

Effective November 30, 2021

- All individuals two years or older (vaccinated or unvaccinated) must wear a mask when:
 - there are two or more individuals in a vehicle owned, leased, or arranged by the Head Start program; and
 - they are indoors in a setting where Head Start services are provided.
- Individuals not fully vaccinated must also wear a mask when outdoors:
 - in crowded settings or
 - during activities that involve sustained close contact with other people.

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Mask Mandate

Exceptions

Mask mandate does not apply;

- when individuals are eating or drinking;
- for children when they are napping;
- for those who cannot wear a mask, or cannot safely wear a mask, because of a disability as defined by the Americans with Disabilities; and
- for children with special health care needs.

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Mask Mandate

Part 1302—Program Operations

§ 1302.47 **Safety practices.** All staff and consultants follow appropriate practices to keep children safe during all activities, including, at a minimum:

(b)

(5) * * *

(vi) Masking, using masks recommended by CDC, for all individuals 2 years of age or older when there are two or more individuals on a vehicle owned, leased, or arranged by the Head Start program; indoors in a setting when Head Start services are provided; and for those not fully vaccinated, outdoors in crowded settings or during activities that involve sustained close contact with other people, except:

(A) Children or adults when they are either eating or drinking;

(B) Children when they are napping;

(C) When a person cannot wear a mask, or cannot safely wear a mask, because of a disability as defined by the Americans with Disabilities Act; or

(D) When a child's health care provider advises an alternative face covering to accommodate the child's special health care needs.

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Vaccine Mandate

Applicability

- Applies to:
 - all **staff** (paid adults who have responsibilities related to children and families enrolled in HS/EHS/CCP **in any capacity regardless of funding source**);
 - Includes admin (e.g., ED, fiscal) if work involves Head Start
 - Even if working remotely
 - **contractors** whose activities involve contact with or providing direct services to children and families; and
 - **volunteers** in Head Start classrooms or working directly with children
- All of the above must be fully vaccinated by **January 31, 2022***

**Individuals who have received their final dose by 1/31/22, but have not completed the two-week waiting period, will be considered fully vaccinated for compliance purposes.*

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Vaccine Mandate

Exemptions

- Vaccine mandate does not apply to employees or volunteers:
 - for whom a vaccine is medically contraindicated*;
 - for whom medical necessity requires a delay in vaccination*; or
 - who are legally entitled to an accommodation based on applicable federal law.
- Those above must undergo regular weekly testing
- **No exemption** for employees who have contracted COVID-19 in the past and have not been vaccinated.

**Documentation supporting this exemption must be signed and dated by a licensed practitioner acting within the scope of their practice*

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Vaccine Mandate - Staff

Part 1302—Program Operations

§ 1302.93 Staff health and wellness.

(a) * * *

(1) All staff, and those contractors whose activities involve contact with or providing direct services to children and families, must be fully vaccinated for COVID-19, other than those employees:

- (i) For whom a vaccine is medically contraindicated;
- (ii) For whom medical necessity requires a delay in vaccination; or
- (iii) Who are legally entitled to an accommodation with regard to the COVID-19 vaccination requirements based on an applicable Federal law.

(2) Those granted an accommodation outlined in paragraph (a)(1) of this section must undergo SARS-COV-2 testing for current infection at least weekly with those who have negative test results to remain in the classroom or working directly with children. Those with positive test results must be immediately excluded from the facility, so they are away from children and staff until they are determined to no longer be infectious.

Vaccine Mandate - Volunteers

Part 1302—Program Operations

§ 1302.94 Volunteers.

(a) A program must ensure volunteers have been screened for appropriate communicable diseases in accordance with state, tribal or local laws. In the absence of state, tribal, or local law, the Health Services Advisory Committee must be consulted regarding the need for such screenings.

(1) All volunteers in classrooms or working directly with children other than their own must be fully vaccinated for COVID-19, other than those volunteers:

- (i) For whom a vaccine is medically contraindicated;
- (ii) For whom medical necessity requires a delay in vaccination; or
- (iii) Who are legally entitled to an accommodation with regard to the COVID-19 vaccination requirements based on an applicable Federal law.

(2) Those granted an accommodation outlined in paragraph (a)(1) of this section must undergo SARS-CoV-2 testing for current infection at least weekly with those who have negative test results to remain in the classroom or work directly with children. Those with positive test results must be immediately excluded from the facility, so they are away from children and staff until they are determined to no longer be infectious.

Vaccine Mandate

Cost Allowability

- **Testing:** Can use HS funds to pay testing costs for employees and volunteers granted exemptions, if grantee's policies allow
 - Grantee not required to cover testing costs
 - But employer required to pay for testing as an accommodation (also check state laws)
- **Masks:** Can use HS funds to purchase masks needed for staff to fulfill duties and responsibilities
 - Programs should make masks available to children when they don't have their own

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Vaccine Mandate

Recordkeeping

- **Must collect and maintain proof of vaccination:**
 - Record of immunization from health care provider or pharmacy;
 - Copy of COVID-19 Vaccination Record Card;
 - Copy of medical records documenting vaccination;
 - Copy of immunization records from public health, state, or tribal immunization information system;
 - Copy of any other official documentation that contains the type of vaccine administered, date(s) or administration, and the name of the health care professional(s) or clinic site(s) administering the vaccine(s)

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Vaccine Mandate

Recordkeeping

- Must also keep track of staff who are temporarily delayed from being vaccinated and/or are excepted from the vaccine mandate
- Medical records must be stored separately from general personnel files

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Head Start Mandate

Other Federal + State Laws

- Some states, like Texas, Montana, and Arkansas, have passed laws or executive orders that prohibit workplace vaccination policies
- Head Start intends to preempt state and local laws and workplace rules which conflict with this interim final rule
- OSHA ETS also applies to Head Start grantees with 100+ employees
 - Currently on hold nationwide due to litigation

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CAPLAW Vaccine Compliance Guide

Section 3 – Identify approach for compliance

<https://resources.capl原因.org/uncategorized/federal-vaccine-mandates-compliance-guide-step-3/>

Rule	OSHA ETS	CMS Rule	Head Start Rule
Covered employers/entities:	Private employers with 100 or more employees	Certain Medicare- and Medicaid-certified healthcare facilities	HS/EHS grantees, including CCPs and delegate agencies
Covered individuals:	All employees	All employees; those who provide services at a site of care or have contact with someone who may be present at a site of care	Staff who work with HS children and families; contractors with direct contact with children and families; volunteers in classroom or working directly with children;

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Other Issues

• Enforcement

- OHS will monitor compliance with the Head Start rule in the same way that it monitors other health and safety standards requirements in the HSPPS.
- Failure to comply can result in revocation of the award and recompetition for funding.

• Full enrollment

- OHS intends to reinstate pre-pandemic practices for tracking and monitoring enrollment in January 2022
- Will resume evaluating which programs enter the Full Enrollment Initiative

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Questions?

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